

**ASSEMBLY BILL**

**No. 573**

**Introduced by Assembly Member Wolk**

February 16, 2005

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An act to repeal and add Section 2782 of the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

AB 573, as introduced, Wolk. Construction contracts: indemnity.

Existing law provides that agreements contained in or affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified.

This bill would repeal this provision and provide, instead, that agreements contained in or affecting any construction contract entered into on or after January 1, 2006, that require a person or that person's insurer to indemnify another against liability for damages arising out of death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from, in whole or in part, the negligence or the willful misconduct of the indemnitee or the indemnitee's agents, servants, or independent contractors who are directly or indirectly responsible to the indemnitee, are against public policy and are void and unenforceable. The bill also would require an indemnitee who has been afforded a defense by an indemnitor to reimburse that indemnitor a percentage of costs and fees actually

incurred by the indemnitor in that defense, equal to that indemnitee's percentage of comparative negligence or comparative willful misconduct.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2782 of the Civil Code is repealed.

2 ~~2782. (a) Except as provided in Sections 2782.1, 2782.2,~~  
3 ~~2782.5, and 2782.6, provisions, clauses, covenants, or~~  
4 ~~agreements contained in, collateral to, or affecting any~~  
5 ~~construction contract and which purport to indemnify the~~  
6 ~~promisee against liability for damages for death or bodily injury~~  
7 ~~to persons, injury to property, or any other loss, damage or~~  
8 ~~expense arising from the sole negligence or willful misconduct of~~  
9 ~~the promisee or the promisee's agents, servants or independent~~  
10 ~~contractors who are directly responsible to such promisee, or for~~  
11 ~~defects in design furnished by such persons, are against public~~  
12 ~~policy and are void and unenforceable; provided, however, that~~  
13 ~~this provision shall not affect the validity of any insurance~~  
14 ~~contract, workers' compensation or agreement issued by an~~  
15 ~~admitted insurer as defined by the Insurance Code.~~

16 ~~(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5,~~  
17 ~~provisions, clauses, covenants, or agreements contained in,~~  
18 ~~collateral to, or affecting any construction contract with a public~~  
19 ~~agency which purport to impose on the contractor, or relieve the~~  
20 ~~public agency from, liability for the active negligence of the~~  
21 ~~public agency shall be void and unenforceable.~~

22 SEC. 2. Section 2782 is added to the Civil Code, to read:

23 2782. (a) Except as provided in Sections 2782.1, 2782.2,  
24 2782.5, and 2782.6, provisions, clauses, covenants, or  
25 agreements contained in, collateral to, or affecting any  
26 construction contract that require a person or that person's  
27 insurer to indemnify another against liability for damages arising  
28 out of death or bodily injury to persons, injury to property, or any  
29 other loss, damage, or expense arising from, in whole or in part,  
30 the negligence or the willful misconduct of the indemnitee or the  
31 indemnitee's agents, servants, or independent contractors who  
32 are directly or indirectly responsible to the indemnitee, are

1 against public policy and are void and unenforceable. For  
2 purposes of this subdivision, negligence includes active, passive,  
3 sole, and concurrent negligence by either a private party or a  
4 public agency.

5 (b) An indemnitee who has been afforded a defense by an  
6 indemnitor shall reimburse that indemnitor a percentage of costs  
7 and fees actually incurred by the indemnitor in that defense,  
8 equal to that indemnitee's percentage of comparative negligence  
9 or comparative willful misconduct.

10 (c) This section does not affect the validity of any workers'  
11 compensation insurance.

12 (d) Nothing in this section modifies the standards of liability  
13 for design professionals in Section 936.

14 (e) This section is not intended to operate retroactively and  
15 therefore shall only apply to construction contracts entered into  
16 on or after January 1, 2006.